

**38 CFR Part 3****RIN 2900-AR13****Certification of Evidence for Proof of Service**

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) amends its adjudication regulations concerning the nature of evidence that VA will accept as proof of military service and character of discharge. In the past, VA only accepted original service documents, copies of service documents issued by the service department or by a public custodian of records, or photocopies of service documents if they were certified to be true copies of documents acceptable to VA by an accredited agent, attorney or service organization representative who had successfully completed VA-prescribed training on military records. This change allows VA to accept uncertified copies of service documents as evidence of military service if VA is satisfied that the documents are free from alteration. The intended effect of this amendment is to streamline and improve the timeliness of adjudication and claims processing for VA benefits—without compromising program integrity.

DATES: This rule is effective [insert date 30 days after date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: David Klusman, Lead Program Analyst, Pension and Fiduciary Service (21PF), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 632-8863. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on April 1, 2021, at 86 FR 17098, VA proposed to amend its adjudication regulations concerning the nature of evidence that VA will accept as proof of military service and character of discharge. The 60-day public comment period ended on June 1, 2021. VA received six comments from interested individuals and organizations.

All six comments were supportive of the proposed rule; however, two commenters additionally expressed concern about VA implementing an accurate method of identifying alterations and other methods of VA security along with this authorization with respect to utilizing uncertified copies of service documents. Neither commenter recommended revision to the proposed regulatory text based on this concern, and one commenter stated that his concern about implementing an accurate method of identifying alterations could be subsequently addressed in VA's M21-1 Adjudication Procedures Manual.

VA appreciates the two commenters' concerns. VA notes that the commenters do not suggest that the validity or advisability of the regulation would depend on how VA chooses to address this concern. Rather, the premise of the commenters' concern is that the proposed rule should be put into effect, and the commenters are merely noting this will create a downstream program integrity concern that VA will have to manage. VA agrees and is in the process of developing instructions for Veterans Benefits Administration (VBA) personnel pertaining to this issue. VA views these concerns as capable of being addressed at the subregulatory level, and does not make any changes to the proposed regulatory text based on them. VA also notes that the proposed regulatory text uses similar language already contained in 38 CFR 3.204 for determining if photocopies of documents necessary to establish birth, death, marriage, or

relationship under the provisions of 38 CFR 3.205 through 3.215 are acceptable as evidence. And if VA is not satisfied that the uncertified copy of a service document is free from alteration and that the document is genuine and the information contained in it is accurate, VA will request the claimant or claimant's representative submit a copy as defined below in 38 CFR 3.203(a)(1)(i)-(iii) while simultaneously requesting verification of service from the service department. VA has taken these concerns into consideration, but makes no change to the final rule based on them.

One of the commenters also stated that there should be an extension period to when Veterans can submit claims prior to discharge from service if they start showing any signs of a mental ailment. VA's rulemaking addresses the nature of evidence that VA will accept as proof of military service and character of discharge; it does not address the timing of filing claims or how early a claim may be filed. Thus, this statement from the commenter is outside the scope of the present rulemaking. However, VA notes that it currently administers the Benefits Delivery at Discharge (BDD) program that allows Veterans to submit disability compensation claims 90 to 180 days prior to their anticipated separation date from active duty. VA makes no change to the final rule based on the comment.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving

Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs has determined that this rule is not a significant regulatory action under Executive Order 12866. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at www.regulations.gov.

Paperwork Reduction Act

This final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521).

Regulatory Flexibility Act

The Secretary certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. The factual basis for this certification is that there are no small entities involved with the process and/or benefits associated with this rulemaking. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more

(adjusted annually for inflation) in any one year. This final rule would have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.100, Automobiles and Adaptive Equipment for Certain Disabled Veterans and Members of the Armed Forces; 64.101, Burial Expenses Allowance for Veterans; 64.104, Pension for Non-Service-Connected Disability for Veterans; 64.105, Pension to Veterans Surviving Spouses, and Children; 64.106, Specially Adapted Housing for Disabled Veterans; 64.109, Veterans Compensation for Service-Connected Disability; and 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death.

Congressional Review Act

Pursuant to Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (known as the Congressional Review Act) (5 U.S.C. 801 et seq.), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits,
Health care, Pensions, Veterans.

Signing Authority:

Denis McDonough, Secretary of Veterans Affairs, approved this document on October 8, 2021, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Jeffrey M. Martin,

Assistant Director,

Office of Regulation Policy & Management,

Office of the Secretary,

Department of Veterans Affairs.

For the reasons stated in the preamble, the Department of Veterans Affairs amends 38 CFR part 3 as set forth below:

PART 3 – ADJUDICATION

Subpart A - Pension, Compensation, and Dependency and Indemnity

Compensation

1. The authority citation for part 3, subpart A, continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. Revise § 3.203(a)(1) to read as follows:

§ 3.203 Service records as evidence of service and character of discharge.

(a) * * *

(1) The evidence is a document issued by the service department. A copy of an original document is acceptable if:

- (i) The copy was issued by the service department; or
- (ii) The copy was issued by a public custodian of records who certifies that it is a true and exact copy of the document in the custodian's custody; or
- (iii) The copy was submitted by an accredited agent, attorney or service organization representative who has successfully completed VA-prescribed training on military records, and who certifies that it is a true and exact copy of either an original document or of a copy issued by the service department or a public custodian of records; or
- (iv) The Department of Veterans Affairs is satisfied that an otherwise uncertified copy submitted by the claimant or by the claimant's representative is free from alteration; and

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